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**IN THE UNITED STATES DISTRICT COURT  
OF THE NORTHERN MARIANA ISLANDS**

**LISA BLACK,**

**Plaintiff,**

**vs.**

**JIM BREWER, CNMI Public School  
System and JOHN AND/OR JANE  
DOE,**

**Defendants.**

) **Civil Case No. 05-0038**

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) **[PROPOSED]**

) **FINDINGS OF UNCONTROVERTED**

) **FACT**

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**PROPOSED FINDINGS OF UNCONTROVERTED FACT**

1. Plaintiff began work as a classroom teacher for the Public School System in 1996. On June 10, 1996, Plaintiff entered into an employment contract with PSS effective July 29, 1996 through July 28, 1998. Charley Kenty Declaration Para. 5. Exhibit A.

2. Plaintiff's annual salary pursuant to her initial contract was \$27,437.44. The contract also afforded employee a housing allowance of \$400 per month. Exhibit A. This amounts to \$32,237.44 for the first year of the contract.

3. To implement CNMI Public Law 10-35, "CNMI Public School Reclassification and Compensation Act of 1996", PSS offered teachers the option to enter a new contract with no

1 housing benefits to receive the increased salary rates authorized by law or to remain under the  
2 current contract with housing benefits. Kenty Decl. Para.6.

3 4. PSS provided Plaintiff with a form that informed her that she had a choice to continue  
4 under her initial contract or sign a new contract and receive higher pay. Kenty Decl. Para. 7  
5 Exhibit B.

6 5. Plaintiff wrote PSS a letter on March 12, 1997 acknowledging her choice. Kenty Decl.  
7 Para. 8 Exhibit C.

8 6. Shortly thereafter, Plaintiff signed a new contract with PSS on March 21, 1997. Kenty  
9 Decl. Para. 9 Exhibit D.

10 7. The term of the new contract covered March 2, 1997 through July 28, 1998. The contract  
11 gave Plaintiff's a new salary of \$38,646,74 without housing benefits. This amounts to more than  
12 \$6000 above the salary plus housing from Plaintiff's initial 1996 contract (\$32,237.44). Exhibit  
13 D.

14 8. While Plaintiff refused to sign the form (Exhibit B) or "waiver" as stated in the her  
15 complaint, she did sign the new contract, which included the cessation of a housing allowance as  
16 required by CNMI law, and accepted the higher compensation of \$38,646,74. Kenty Decl. Para.  
17 10.

18 9. On April 14, 1998, Plaintiff received notice that her employment contract with the Public  
19 School System that expired on July 28, 1998 would not be renewed. Kenty Decl. Para. 11  
20 Exhibit E.

21 10. In July of 1998, Plaintiff was transferred from San Antonio Elementary School to  
22 Koblerville Elementary School. She signed a new contract with PSS reflecting the change.  
23 Kenty Decl. Para. 12 Exhibit F.

1 11. Plaintiff continued working for PSS at Koblerville Elementary School until she resigned  
2 in April of 2002. Kenty Decl. Para. 13 Exhibit G.

3 12. While working for Koblerville Elementary School, Plaintiff received two reprimand  
4 letters dated November 7, 2001 and March 22, 2002 for insubordination. Kenty Decl. Para. 14  
5 Exhibit H and I.

6 13. During April of 2002, Plaintiff requested annual leave to attend a sailing regatta. Plaintiff  
7 Deposition Transcript (Exhibit J) p. 27-28.

8 14. Plaintiff's request was specifically denied by the Principal. Plaintiff Depo Transcript.  
9 p.29 L.6-7.

10 15. Plaintiff went to the regatta anyway and did not report to work. Plaintiff Depo Transcript  
11 p. 29 L. 24 and p.30 L.1.

12 16. Plaintiff resigned shortly after the sailing regatta on April 19, 2004. Exhibit G.

13 17. Plaintiff returned to the Public School System in March of 2004. She entered into a  
14 short-term contract with PSS effective March 4, 2004 through June 4, 2004. This contract was  
15 extended from June 5, 2004 through July 30, 2005. Kenty Decl. Para. 15 Exhibit K.

16 18. This contract (Exhibit K) provides:

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20 CONTRACT TENURE: There are no tenured employment positions offered by  
21 PSS. This contract is only for the term stated in § 1 (c) and no right to renewal is  
22 granted, expressly or impliedly, by PSS to the Employee regardless of whether  
23 job performance during the contract term is satisfactory. An offer for continued  
employment is completely within the discretion of PSS.

24 19. In school year 2004-05, most teacher employment contracts were for a two-year time  
25 period. Kenty Decl. Para.16.

26 20. In October of 2004, some members of the Hopwood Junior High School ("HOPWOOD"  
27 or "Hopwood") staff submitted a letter of concern regarding the performance and management of  
28

1 Vice-Principal Beth Nepaial. Kenty Decl. Para.17. Exhibit L.

2 21. Plaintiff has repeatedly denied involvement in the letter of concern.

- 3 a. Plaintiff's Complaint Plaintiff 12 (stating "Mr. Brewer formulated the erroneous  
4 belief that Ms. Black was responsible for drafting, circulating, and/or encouraging  
5 others to sign it" (emphasis added)).
- 6 b. Guerrero Decl. Para.6, Exhibit M p. 738-741(letters Plaintiff submitted to Board  
7 Hearing Panel regarding her not being involved in the "letter of concern"  
8 regarding Mrs. Nepaial).
- 9 c. Plaintiff Depo Transcript p. 67 Line 20-21 (Plaintiff stated that she told Mr.  
Brewer ". . . I explained to him that I didn't write it and I hadn't even signed it . .  
.").

10 22. The letter of concern dated October 4, 2004 focuses in three main areas "(1) capabilities  
11 of being the vice-principal for curriculum and counseling department (2) apparent lack of equity  
12 toward the staff she should aim to lead (3) her lack of interpersonal skills." Exhibit L.

13 23. The letter of concern was submitted to the Commissioner's Office and the Board of  
14 Education before the concerns were raised to the Principal of Hopwood. Plaintiff acknowledges  
15 this was not appropriate. Plaintiff Depo Transcript p. 67 lines 1-8.

16 24. From October until nearly the end of school year 2004-05, staff members and community  
17 members became focused on the dispute. Nepaial Decl. Para.10. The divisive environment  
18 affected HOPWOOD's administration, teachers and staff's ability to focus on an accreditation  
19 review, which took place in the spring of 2005. Nepaial Decl. Para.10.

20 25. As a result of the "letter of concern", the administrators at Hopwood, the Commissioner,  
21 and the PSS Human Resources Officer spent a considerable amount of time addressing the  
22 matter. Kenty Decl. Para. 18. The Human Resources Officer over a period of two months met  
23 individually with the signatories to the letter to discuss their concerns. Kenty Decl. Para. 19.

24 26. Plaintiff received a letter of reprimand on January 11, 2005 from Principal Brewer for  
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1 failing to provide substitute teaching coverage and embarrassing a student. Kenty Decl. Para.20.  
2 Exhibit N.

3 27. Reminders about substitution coverage were listed in school bulletins. Beth Nepaial  
4 Decl. Para. 13. Exhibit O.

5  
6 a. December 13, 2004 Teacher Bulletin (bates stamped 1908-09).

7 b. December 17, 2004 Teacher Bulletin (bates stamped 1910-11).

8 c. December 22, 2004 Teacher Bulletin (bates stamped 1912-13).

9  
10 28. Plaintiff admitted that she typically receives bulletins in her box. Plaintiff Depo  
11 Transcript p. 105 18-21 and p. 102 lines 15-24.

12 29. Plaintiff received a schedule in her box at school that specifically listed her name and the  
13 class periods that she would need to provide substitution coverage. Beth Nepaial Decl. Para.13  
14 Exhibit P. Plaintiff Depo Transcript p. 102 lines 15-24.

15  
16 30. Plaintiff admits that she interrupted another teacher's class and spoke to Beth Nepaial's  
17 son in front of other students. Depo Transcript lines p. 91. Plaintiff asked Ms. Nepaial's son if  
18 he was afraid of Plaintiff. Plaintiff Depo Transcript lines p. 91 lines 12-24. Plaintiff admits that  
19 she asked him about his mom [Ms. Nepaial] being afraid to send him to Plaintiff's class.  
20 Plaintiff Depo Transcript lines p.91 lines 12-24.

21  
22 31. Plaintiff received another letter of reprimand from Principal Brewer dated February 14,  
23 2005 for insubordination for interrupting Ms. Menchu Grayer's class during instructional time  
24 despite instructions from Principal Brewer not to do so. Kenty Decl. Para.21. Exhibit Q.

25  
26 32. Plaintiff admits that she was told not to interrupt instructional time. Plaintiff Depo  
27 Transcript p. 141 lines 9-13. When discussing a complaint registered by a co-worker against  
28 Plaintiff, Principal Brewer specifically instructed Plaintiff not to discuss the issue with Ms.

1 Greyer or interrupt class time. Plaintiff Depo Transcript p. 145 lines 3-17.

2 33. Upon leaving Principal Brewer's Office, Plaintiff went directly to co-worker Ms.  
3 Greyer's class despite Principal Brewer's instructions. Plaintiff Depo Transcript p. 145.

4 34. Plaintiff submitted a written transcript of the meeting with Principal Brewer wherein she  
5 states: "Absolutely" when asked if she interrupted Ms. Grayer's class time despite Mr. Brewer's  
6 instructions not to. Exhibit M. p.1802.

7  
8 35. On February 14, 2005, Plaintiff received a letter of concern regarding her flicking the  
9 ears of students and pushing their heads. Exhibit M. p.1751.

10 36. Plaintiff admitted to flicking the ears of students and pushing their heads. Plaintiff  
11 claimed that the flicking and pushing were part of a lesson on levels of comfort. The Board  
12 Hearing Panel did not find this excuse credible. Exhibit M p. 1676.

13  
14 37. Plaintiff received a letter of concern dated April 18, 2005 regarding her failure to provide  
15 information regarding an excused absence and her failure to report to the meeting with Ms.  
16 Nepaial. Nepaial Decl. Para.18. Exhibit R.

17  
18 38. On April 14, 2005, Beth Nepaial asked a student to deliver a note to Plaintiff regarding  
19 the meeting. Nepaial Decl. Para.16. The note requested that Plaintiff meet with Ms. Nepaial at  
20 the end of school that day but Plaintiff did not report to the meeting. Nepaial Decl. Para.16 and  
21 17. Plaintiff Depo Transcript p.107 L. 7-22

22 39. Letters of concern are not placed in PSS employee personnel files. Formal reprimands  
23 are placed in employee's personnel files. Kenty Decl. Para. 22.

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25 40. It was well known that a school counselor, Nariani Sikyang, was the leader of the group  
26 with the concerns about Beth Nepaial. Nepaial Decl. Para.7 Sikyang Decl. Para.7 and 8.

27 41. Ms. Sikyang collected the information that constituted the letter of concern and obtained  
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1 signatures of her fellow employees. Sikyang Decl. Para.3.

2 42. In the months following the letter of concern, investigations, meetings and complaints in  
3 the media took place with dispute being mediated by the Commissioner of Education in February  
4 of 2005. Kenty Declaration. Para. 23.

5 43. During this process, PSS offered Ms. Sikyang an employment contract, which she signed.  
6 Sikyang Decl.Para.9.

7 44. Sikyang later retired on December 31, 2005. Sikyang Decl. Para.10.

8 45. Mr. Brewer asked Sikyang to return to HOPWOOD as a working retiree. Sikyang Decl.  
9 Para.11.

10 46. Ms. Sikyang continues to work at Hopwood to this day. Sikyang Decl. Para.12.

11 47. On April 22, 2005, Plaintiff received a notice that her contract, which expired on July 30,  
12 2005, would not be renewed. Exhibit M. p. 1768.

13 48. On April 20, 2005, Principal Brewer issued a memo to the Human Resources Office  
14 regarding his reasons for not renewing Plaintiff's contract. Kenty Decl. Para. 24. Exhibit S.

15 49. This letter and the supporting documents were not placed in Plaintiff's official personnel  
16 file maintained by PSS Human Resources Office. Kenty Decl. Para. 25.

17 50. On May 19, 2005 Plaintiff filed a formal grievance and complaint against Jim Brewer.  
18 Exhibit L. On July 15, 2005, the Commissioner of Education issued her decision regarding the  
19 grievance. Exhibit M. On August 15, 2005 Plaintiff filed her notice of appeal of the  
20 Commissioner's decision with the Board of Education. Exhibit M.

21 51. The appeal was heard by a panel of three Board of Education members on September 22-  
22 23, 2005 Plaintiff was represented by Eric Bozman of the O'Connor, Berman, Dotts and Baner  
23 office. The Commissioner's Office was represented by Heather Kennedy, PSS Legal Counsel.  
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1 Exhibit L. Assistant Attorney General, Jeanne Rayphand, provided legal advice to the hearing  
2 panel. Guerrero Decl. Para. 10. On November 9, 2005, the Board issued a decision in the  
3 matter. Exhibit M.

4 52. The hearing was closed, both parties were afforded the opportunity to present evidence  
5 and cross-examine witnesses. Guerrero Decl. Para.11.

6 53. Plaintiff declined to offer any testimony to support her appeal. Exhibit M. p.1672.

7 54. At the conclusion of the hearing, both Plaintiff and the Commissioner's Office were  
8 provided the opportunity to submit proposed findings and comment on the Board's Proposed  
9 findings and conclusions in accordance with the CNMI Administrative Procedures Act. Exhibit  
10 M. p.1708-1724, p.1687-1692.

11 55. The Hearing Panel considered 11 issues raised by Plaintiff. Exhibit M. p. 1672-1674.  
12 Under issue 4, the Hearing Panel specifically considered the letters of concern, the formal  
13 reprimands, the performance appraisal and the non-renewal of Plaintiff's teaching contract.  
14 Exhibit M p.1673.

15 56. The Panel found that the letters of reprimand, the letters of concern, and the performance  
16 appraisal were all justified and substantiated. Exhibit M.

17 57. In late July of 2005, the Human Resources Office began processing a transfer for Plaintiff  
18 to teach at Marianas High School. Kenty Decl. Para. 27.

19 58. After Plaintiff visited the Human Resources Office on July 27, 2005 to obtain her  
20 separation notice from PSS, the Human Resources Officer issued a letter informing Plaintiff that  
21 PSS would process her separation paperwork as she requested. Kenty Decl. Para. 28. Exhibit T.  
22 Plaintiff admits that she told Human Resources staff that she did not wish to transfer. Plaintiff  
23 Depo Transcript P 150-151.



1 59. Plaintiff claims that the non-renewal of her contract and alleged violation of her  
2 constitutional rights caused her emotional distress.

3 60. In response to Interrogatory No. 2 requesting information regarding the nature and extent  
4 of her injuries, Plaintiff claims “stress and emotional strain associated with being terminated  
5 from her teaching positions and the attendant damage to her personal and professional reputation  
6 in the community”. In response to Interrogatory No. 12 regarding Plaintiff’s alleged “severe  
7 anxiety”, Plaintiff states: “the anxiety and stress that her unemployment caused were the typical  
8 sort that a person would experience when faced with the prospect of having no means by which  
9 to support themselves.” Exhibit U.  
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12 By:

13 \_\_\_\_\_/s/\_\_\_\_\_  
14 Heather L. Kennedy  
15 Karen M. Klaver  
16 Attorneys for the Public School System  
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